

## **Suggestions for Revisions of PERB Regulations**

I suggest certain revisions of PERB regulations regarding agency fees. I would hope that the Board could understand that I represent the wishes of a few hundred committed individuals at present. I suggest that PERB regulations be amended to provide the following safeguards. Proposed minor additions to the regulations are underlined. Rationale for such changes is italicized.

32992. Notification of Nonmember

32992(b)

All such calculations shall be made on the basis of an independent audit that shall be made available to the nonmember in the agency fee notice. The audit shall clearly state that the amounts of both the chargeable and nonchargeable expenses were audited according to generally accepted accounting principles.

*The entire rationale for Beck and its progeny is to ensure that nonmembers are charged only for chargeable expenses. The language and specifics of what procedures are required for an audited statement has left this open to interpretation as to what level of assurance is required and what specific items are to be assured. Caselaw is replete with various interpretations. This addition spells out clearly and concisely what is required.*

32992(c)(3).

Proof that such notice has been sent to all nonmembers shall consist of signature delivery to the nonmembers by certified mail with return receipt, express mail, or any common carrier providing such service. The signature record is to remain on file with the exclusive representative for one year after mailing and subject to inspection by any non member.

*I have not received a copy of the Hudson notice for 2004-2005. My exclusive representative claims it was mailed by bulk mail. The bulk mailer does not show any record to whom it was sent. I have heard the same from other individuals. Thus, they are denied the opportunity to object. This addition would ensure that an exclusive representative's notice actually reached the intended recipient who may then exercise the right to object.*

### 32993. Filing of Financial Report

Each exclusive representative that has agreed to or implemented an agency fee provision shall, as part of the financial report required by Government Code Sections 3502.5(f), 3515.7(e), 3546.5, 3584(b), 3587, 71814(f), or Public Utilities Code Section 99566.3, also include (a) the amount of membership dues and agency fees paid by the employees in the affected bargaining unit, and (b) identify the expenditure(s) that constitute(s) the basis for the amount of the agency fee. The financial report shall be made available on request to any nonmember within 60 days of the end of an exclusive representatives fiscal year. Failure to comply shall result in the return of all agency fees paid and termination of further collections until such report is made available.

*Exclusive representatives have failed to comply with Government Code Section 3587. One has not complied with this section for four years. When a charge is filed, PERB has simply ordered compliance within 10 days. The order was then ignored by the exclusive representative for several months without penalty. Accountants then have ample time to massage the numbers but will be much harder pressed to engage in chicanery given the short yet reasonable time period to prepare the financial report. No offense but this Board regulation as presently written is simply a serving suggestion.*

### 32994. Agency Fee Appeal Procedure

#### 32994(b)(3)

Within 45 days of the last day for filing an objection under Section 32994(b)(2) of these regulations and upon receipt of the employees agency fee objection, the exclusive representative shall request a prompt hearing regarding the agency fee before an impartial decisionmaker and concurrently notify the agency fee objectors via signature record as encoded in Regulation 32992(c)(3).

*I have found that as a practical matter, arbitration agencies are very sloppy in their notification procedures, missing mailings to those who sent objection letters. This deprives the right of objectors to challenge in the arbitration hearing.*

## 32995. Escrow of Agency Fees in Dispute

### 32995(c)

Interest at the prevailing rate shall be paid by the exclusive representative on all rebated fees any amount awarded as a result of arbitration.

*The language of this section has been wrongly interpreted by some to infer that an escrow/rebate system complies with Hudson and its predecessors. Escrow of funds that clearly are in dispute complies but rebates of funds that are clearly not in dispute are impermissible. The Supreme Court clearly stated in Ellis v. Railway Clerks 466 U.S. 435 (1984) that "A rebate scheme reduces but does not eliminate the statutory violation". If dissenter's funds are held in escrow and not released until after an election, the dissenters are denied use of their funds to support their views.*

### 32995(b)

The exclusive representative shall provide any objector requesting proof of existence of such account with any document an objector requires for such proof.

*The present regulation has no verification provision. Non compliance with the escrow provision is too easy. Objectors cannot make a prima facie case since neither the financial institution nor the union can be compelled to release this information. PERB is not an investigative body, it has no power to check for compliance. Why any exclusive representative would ever comply with 32995(a)(1) or (2) is beyond me.*